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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,855	08/18/2003	Stephen Miles Rhodes	60,137-188; 115-3711-U	4058
26096	7590	03/13/2006		
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009				
EXAMINER HEPPERLE, STEPHEN M				
ART UNIT		PAPER NUMBER		
3753				

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,855

Applicant(s)

RHODES, STEPHEN MILES

Examiner

Stephen M. Hepperle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Translations FR 1476080, 2565658

Per applicant's request, translations of French patents 1,476,080 and 2,565,658 have been obtained and are enclosed.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the valves recited in claim 1 must be shown in Figs. 2C and 3B or the feature(s) canceled from the claim(s). The figures seem to show a simple through tube where no valving exists. Clarification without the addition of new matter is required. Since applicant says the valve per se is known, internal details of the valve could be omitted and reference made to a prior art valve in the specification. The assertion that the valve is known does not allow applicant to show details of a valve that cannot control fluid. As stated above, applicant is welcome to simply omit the internal of the details of the valve and not claim those details. See the rejection under 35 USC 112 below for more detail.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. It is unclear what the actual invention is. Details of the valve are found in claims 2-11, yet applicant's remarks indicate that the valve per se is not part of the invention. The shaft would appear to be part of the valve. There needs to be a clear line of demarcation between the "valve" and the "handle". Clarification is necessary.

Claims 7-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is not clear from Figs. 2C and 3B, or the specification how water is valved in the embodiment of Fig 2C or 3B, claims 7-11. The figure seems to show a simple through tube where no valve exists. Clarification without the addition of new matter is required. As in the objection to the drawings, a reference to a particular prior art valve would overcome the rejection.

The above rejections under 35 USC 112 can be withdrawn if applicant cancels limitations drawn toward the details of the valve.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sueur (FR 1.476.080). Sueur shows two valves that rotate about parallel axes. Each valve has a handle between a manifold 5 connecting the valve outputs and a threaded connection for supply. Spout 7 extends from the midpoint of the manifold. The overall device appears to be intended for connection to horizontal supply piping. The invention is intended to have an adjustable distance between the hot and cold water pipes to allow installation with variable spacing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to install the Sueur assembly to the top of a sink, connected to vertical water supply lines, because such an orientation is very well known, and because vertical piping arrangements have different spacings as well, which can all be served by adjusting the Sauer device. It would have been obvious to orient the spout so that the outlet still points down as that is the expected orientation of a faucet outlet. This orientation would cause Sueur to meet the claimed vertical relationships. Regarding claim 2, the part of the Sueur valve to which the handled is attached is seen as a shaft (which is seen through a slot which permits the shaft to rotate roughly 90 degrees), and water must inherently flow inside the shaft or it would come out the handle slot.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sueur in view of applicant's disclosure. Applicant's disclosure (paragraph 0018), confirmed by remarks filed 26 September 2005 and 16 January 2006, indicate that the valves per se as used in the invention are known. It would have been obvious to use the valve stated as known by applicant in the Sueur device because both valves serve the same purpose and work in essentially the same way. It is also noted that the water in Sauer must move past or near the radial outer surface of the Sauer shaft in order to enter manifold 2.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sueur in view of applicant's admission of prior art or Stretch et al. The cap is seen as a valve detail. It would have been obvious to include a cap on the tops of the Sueur valve. Stretch shows a valve having a central hollow shaft D with a housing slot Q for a handle to rotate the shaft. A cap Q provides a bearing and access to replace the valve. It would have been obvious to provide a cap as shown by Stretch to enclose a bearing and/or to make servicing of the valve easier.

Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sueur in view of Armitage (EP 307 105). Armitage shows a faucet extending vertically through a base at 12 with separate hot and cold valves. Each valve controls a tube 20, 22 that extends under a removable spout cover 28 to outlet fitting 82. With respect to claim 9, note notches in the Sueur valve housings 1. It would have been obvious to route separate tubes to the Sueur outlet as shown by Armitage, "in order to meet certain U. K. Water Board or other public utility regulations" (Armitage, first paragraph).

Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed 16 January 2006 have been fully considered but they are not persuasive. The argument about orientation of Sauer is not persuasive. It is seen as well within the skill of the ordinary practitioner to see that Sauer would be useful if rotated 90 degrees. The pipe spacing issue solved by Sauer is just as applicable to vertical pipes, and even ignoring that, it is not seen that wall mounted valves cannot be adapted to sink or tub top use without invention. Changing the orientation of the handles and the spout would be obviously necessary

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but are not seen as requiring invention. With respect to claim 5, Sauer shows the relative placement of parts—Stretch is relied on to show a separate cap, not internal valve details. Stretch was applied to modify Sauer because Sauer seems to show a cap integral with the overall valve housing. With respect to claims 7-10, Armitage is not relied on to show a vertical orientation, only for showing the arrangement of applicant's Fig. 4, as claimed in claim 7, which delivers the hot and cold water through separate tubes in the spout. There is no distinction seen.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

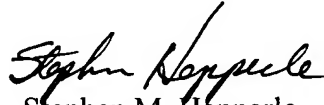
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Hepperle whose telephone number is 571-272-4913. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on 571-272-4930. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen M. Hepperle
Primary Examiner
Art Unit 3753

SMH